

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 2147 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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SHRI PRAVINCHANDRA NATHALAL SHAH & 1 - Applicant(s)**Versus****THE STATE OF GUJARAT & 1 - Respondent(s)****Appearance :**

M/S THAKKAR ASSOC. for Applicant(s) : 1 - 2.

MR.AD OZA PP and MR.SS PATEL APP for Respondent(s) : 1,

MS AVANI S MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**Date : 01/03/2006****CAV JUDGMENT**

1.Rule. Heard learned Senior counsel Mr.P.M. Thakkar for the applicants, learned Public Prosecutor Mr. A.D. Oza for the respondent-State and learned Senior counsel Mr.K.G. Vakharia for the complainant.

2.By way of filing this application under Section 438 of the Code of Criminal Procedure, 1973, the applicants who apprehend their arrest in connection with the C.R.No.I-1 of 2005

registered with Gandhinagar Zone Police Station for commission of the offence punishable under Sections 406,409,420,467,468 and 471 read with Section 120-B of I.P.C. have prayed to enlarge them on anticipatory bail and to quash and set aside the order passed by the learned Additional City Sessions Judge, Ahmedabad in Criminal Misc. Application No.220 of 2005 whereby, the prayer of the applicants for anticipatory bail was refused by the Court.

3.This matter was placed before my brother Judge Hon'ble Mr. Justice A.L. Dave who issued notice and the bank was permitted to be joined as respondent No.2 who is represented by the learned counsel Ms. Avani S. Mehta. The application was heard on different dates and with the consent of the learned counsel for the respective parties, the matter was finally heard.

4.Before deciding the application, it would be appropriate to notice the relevant facts of the

case:-

(A) The applicants are the Directors of Gayatri Intermediates Pvt. Ltd. The company had obtained a term loan of Rs. 1 Crore from Shahibaug Branch of Madhavpura Mercantile Co-operative Bank Ltd. on 12.10.1998. Applicant No.1 was a Director in the Bank. The application for term loan was straight way given to the head office of the bank and the Board of Directors of the bank in the meeting dated 17.10.1998, sanctioned the loan and granted 45 installments each of Rs.2,23,000/- to enable the applicants to repay the amount of loan. In the relevant column of the application, there was no signature of the officer of the bank whereas in the column of recommendation by Advance Committee one Mr. Mahendra S. Upadhyay had signed. In the column of recommendation of C.E.O. and Board of Director, Managing Director of the Bank Mr.Devendra Pandya signed as Managing

Director. It is mentioned in the complaint that the applicants have submitted application for loan which was incomplete and containing false particulars in conspiracy with the former Chairman of the Bank Mr.Rameshchandra Nandlal Parikh and former Managing Director Mr.Devendraprasad Bhagwanji Pandya and got sanctioned the loan but did not repay the same. Thereby the applicants have by not paying Rs.44,25,120/- and misusing the amount, committed the offences enumerated in the complaint.

(B) It is relevant to mention that it is alleged in the complaint that the applicants are the family members of Directors of one Shri Siddhi Intermediates Pvt. Ltd. which had also obtained different loans from the bank. The Directors of Shri Siddhi Intermediates Pvt. Ltd., are liable to make payment of Rs.21,79,360/- outstanding in industrial hypothecation loan account to the bank. It is

also clear from the complaint that the directors of Shri Siddhi Intermediates Pvt. Ltd., had obtained different loans and an amount of Rs.6,00,20,253.28/- paisa remained due and payable by the said company. According to the complaint, an amount of Rs.6,66,24,733.28/- remained due and payable by both the companies. Thereby big amount of loan was taken by the applicants in conspiracy with the then Chairman and Managing Director of the bank by furnishing incomplete and false particulars in the application form. The applicant No.1 Pravinchandra as Director of the Bank had got sanctioned the loan against the Banking rules and regulations and misused the investments made by the investors. The applicants in collusion with the then chairman Managing Director and C.E.O. of the Bank obtained loan without proper security against the guidelines of Reserve Bank of India.

(C)The respondent bank has filed affidavit-in-reply wherein it is mentioned in detail as to how the offences are committed by the applicants.

5.Having heard the learned advocate for the parties at length and also gone through the details, I am of the opinion that no case is made out by the applicants for grant of anticipatory bail under section 438 of the Code of Criminal Procedure, 1973.

6.In view of the averments made in the complaint, I am of the opinion that there is *prima facie* case against the applicants and reasonable ground to believe that the applicants have committed offences enumerated in the complaint.

7.The charges leveled against the applicants are grave and serious and severity of punishment including life imprisonment in the event of punishment cannot be ignored by the Court. The applicants are highly influential persons, therefore there is danger of their absconding

or fleeing, if released on bail. There is reasonable apprehension of witness being tempered with as the punishments prescribed for the offences committed by the applicants are severe. Further more, an order of anticipatory bail at this stage is liable to thwart the investigation which is at initial stage. The detailed order passed by the learned Additional Sessions Judge, Ahmedabad rejecting the application for anticipatory bail, could not be shown to be erroneous so as to warrant any interference in this application. Learned P.P. Mr.Oza for the respondent No.1 has pointed out to me that in similar case, the High Court has rejected the application for regular bail filed under Section 439 of the Code of Criminal Procedure wherein the conspiracy between the defaulters and the then Chairman and Managing Director of the bank is averred in the complaint. Learned P.P. Mr. A.D. Oza has relied upon a decision of this Court in the case of

Rameshchandra Nandlalbhai Parikh (who was the Chairman of Madhavpura Mercantile Co-operative Bank Ltd. and co-accused in this case) V/s. State of Gujarat and another in Criminal Misc. Application No.1549 of 2004 wherein this Court (Coram: A.L. Dave, J.) by order dated 08.04.2004 rejected the bail application filed under Section 439 of the Code of Criminal Procedure.

8.It is also to be noticed that the company of which the applicants were directors, did not repay the loan amount though the goods hypothecated to the bank were sold. In the application which was submitted before the learned Sessions Judge, the applicants had not mentioned that they were ready and willing to pay the loan amount. This was one of the considerations while rejecting the anticipatory bail application. In this application, the applicants have made statement that they are ready and willing to make payment but no

payment has been made to the bank inspite of the fact that the application is pending in this Court since 25.02.2005. On totality of the facts emerging from the facts of this case, I am of the opinion that no ground is made out by the applicants for grant of anticipatory bail.

9.The learned P.P. has also relied upon the decision of the Hon'ble Supreme Court in the case of Rameshchandra Nandlalbhai Parikh V/s. State of Gujarat and another reported in (2006)1 SCC 732 wherein the Hon'ble Supreme Court rejected the bail application wherein huge amounts were advanced to persons of dubious antecedents without taking steps to verify their creditworthiness in violation of applicable banking procedures and regulations.

10.In view of above, this application fails and stands rejected. Rule stands discharged.

(BANKIM.N.MEHTA, J.)

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